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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

B.B.,

Petitioner,

v.

THE SUPERIOR COURT OF CITY
AND COUNTY OF SAN FRANCISCO
COUNTY,

Respondent;

SAN FRANCISCO HUMAN SERVICES
AGENCY et al.,

Real Parties in Interest.

A156006

(City and County of San Francisco
Super. Ct. No. JD153236)

B.B. (mother) has filed a petition for an extraordinary writ seeking review of an order setting a hearing under Welfare and Institutions Code ¹ section 366.26 to determine the permanent placement of her child J.R. Mother contends there is insufficient evidence to support either the court's jurisdiction finding that the previous placement of the child in mother's custody was not effective or the court's disposition order justifying removal of the child from her custody. (§ 387.) Mother also complains that the juvenile court failed to hold a separate disposition hearing to determine whether removal of the child was appropriate. Pending our resolution of the petition, mother requests a temporary stay of the section 366.26 hearing set for April 10, 2019. Real party in interest, San Francisco Human Services Agency (agency), opposes the petition.

¹ All further unspecified statutory references are to Welfare and Institutions Code.

We conclude mother's contentions do not warrant relief. Accordingly, we deny the petition for an extraordinary writ on the merits, and deny as moot the related request for a temporary stay of the section 366.26 hearing.

FACTS²

Mother and father are the parents of the child born in June of 2015. At the time the child was born mother was homeless and living apart from father. Mother had a history of mental health problems for which she had been previously involuntarily hospitalized in 2013. Several weeks after the child's birth, the shelter staff reported that mother was acting erratically, and staff believed mother might not be taking her antidepressant medications. The police detained mother and arranged for a psychiatric evaluation at a county hospital, while the agency took the two-month-old child into protective custody.

On August 14, 2015, the agency filed a section 300 petition, alleging, in pertinent part, that mother's mental health problems impaired her ability to care for the child. On the day the agency detained the child, mother was again involuntarily hospitalized on a psychiatric hold under section 5150. In the agency's detention report, the agency social worker informed the court that in 2013 mother had been involuntarily hospitalized with a diagnosis of psychotic disorder and on admission she was having delusions.

In its combined jurisdiction and disposition order issued on October 20, 2015, the juvenile court adjudged the child a dependent of the court based on findings that mother's ability to care for the child was impaired due to her mental health problems and on or about August 12, 2015, she was on a "5150 hold;" and father had anger management issues as evidenced by recent criminal convictions for misdemeanor battery and he was currently on parole for a 2010 felony conviction for assault. The court placed the child in the agency's custody for placement in a foster care home and the parents were granted

² The facts are taken from the various reports filed by the agency in the juvenile court. The child's father is not a party to this writ proceeding, and therefore our factual recitation focuses almost exclusively on mother's circumstances. Additionally, we set forth only those facts as are necessary to resolve this writ proceeding.

reunification services. The court specifically directed mother to submit to a psychological evaluation and follow any recommended treatment for psychotherapy and/or prescribed medication. Following a psychological evaluation, mother was diagnosed with post traumatic stress disorder, uncomplicated bereavement, unspecified depressive disorder, compulsive personality traits, and cannabis use in sustained remissions. The evaluating psychologist recommended, among other things, that mother must abstain from substance use, participate in individual therapy for a minimum of two years, and that her compliance with a prescribed medication regimen was to be monitored.

On March 23, 2016, the agency filed its status review report, recommending that mother's reunification services be continued for another six months "given the mother's consistent visitation, active participation in her residential treatment program . . . , and current engagement with her therapist." However, the agency recommended that father's reunification services and visits be terminated because, during the reporting period, father had only minimal visits with the child, and while he had completed one case plan component (substance abuse assessment), he failed to complete any other case plan components (psychological evaluation, engaging in individual therapy to address anger management, and parenting classes). Thereafter, on April 19, 2016, the court adopted the agency's recommendations and continued mother's reunification services for another six months, and in a later order, dated May 16, 2016, the court adopted the agency's recommendations and terminated father's reunification services and visits with the child.

On October 18, 2016, at the 12-month review hearing, the court adopted the agency's recommendations and the child was returned to mother's custody with family maintenance services. By that time mother had demonstrated her ability to safely and appropriately care for the child. Mother had been consistently and regularly complying with her court-ordered services to address her mental health issues and she had secured approved regional center (RC) housing with an in-home service provider to assist in the care of the child. The agency also reported that since termination of father's reunification

services and visits, he had not been in touch with the agency and he had no visits or contact with the child.

For the next year, from October 2016 to October 2017, the court continued the dependency with the child remaining in mother's custody with family maintenance services based on the agency's six-month review reports filed with the court.

On March 23, 2018, after mother had custody of the child for 17 months, the agency filed a report recommending dismissal of the dependency proceeding subject to mother's completion of the requirements of her court-ordered case plan. The agency social worker reported that mother was not in compliance with her case plan requirements regarding services to address her mental health issues. Mother's therapist reported that she had discontinued therapy sessions for mother and the child on November 1, 2017 because mother and child had attended only seven sessions since the start of May 2017. According to the therapist, mother's "lack of engagement in therapy has impacted treatment and [the therapist's] ability to support [the child's] functioning and mother's capacities to manage [the child's] emotional and behavioral needs. Throughout treatment mother continued to report difficulty in managing [the child's] behaviors including hitting and biting mother. Progress in treatment was minimal due to the lack of consistency." Additionally, mother had stopped taking her prescribed medication for anxiety and depression on March 15, 2018. Mother claimed her anxiety and depression were no longer present, and she felt she was taking too many medications and was going to ask her doctor to reevaluate the medication. While mother stated she did not have substance abuse problems, she disclosed she had a medical marijuana card, but only rarely used marijuana.

On April 19, 2018, the agency filed in the court an "addendum report," in which the dismissal recommendation was rescinded due to changes in the family situation. The agency social worker reported that since the last report mother and the child were no longer living in approved RC housing with an in-home service provider but were instead staying in Oakland with mother's group of social support friends. On March 30, 2018, the agency social worker met with mother, who agreed to move back to approved RC

housing and mother ultimately secured new RC housing with an in-home service provider on April 11, 2018. However, in light of mother's conduct in changing her housing without first informing the agency about her plans, the agency social worker believed the case should not be dismissed until mother was in a stable home. At the April 19, 2018, hearing, the court continued the matter for three months to July 19, 2018 for a progress or status report on the agency's dismissal recommendation.

On July 9, 2018, a newly assigned agency social worker filed a report with the court, recommending that the case be continued to the "18-month review hearing date of October 18, 2018." The agency social worker's assessment and evaluation informed the court that mother's current case plan required her to comply with services and remain in approved RC housing with an in-home service provider. Mother was then currently residing in approved RC housing with an in-home service provider. However, mother was "very indecisive" as to where she wanted to live, indicating at various times that she wanted to live in Fresno either with the child's maternal grandmother or by herself with the child. The agency social worker also reported that mother was not in compliance with her other case plan requirements. Mother had "disengaged from parenting classes that she had begun," had "not engaged in individual therapy," had not been taking her psychotropic medication and needed an evaluation; and mother needed to identify a safe person to take the child to when mother wanted to spend time with her boyfriend B.A.

At the July 19, 2018 hearing, the child's counsel reported to the court that she had received an email the night before from the child's maternal aunt regarding possible sexual abuse of the child. The maternal aunt's report was based on social messaging sent by mother to the aunt regarding the child's statements that someone had touched the child inappropriately. The court continued the matter to July 23, 2018 to allow for an investigation of the child's sexual abuse allegations and for a physical examination of the child. The mother also agreed to allow the child's former foster parents to keep the child during the investigation.

On July 20, 2018, the agency staff investigated the child's sexual abuse allegations which included conducting forensic interviews with mother, mother's in-home service

provider, and the child. A police report was generated, but the police stated they would not investigate the matter because of the lack of information about a date, incident location, and information about the suspected abuser. The District Attorney's office staff declined to participate in the agency's forensic interviews because "there was not enough information to warrant law enforcement." During the forensic interviews with agency staff and an emergency response worker, the child did not make any disclosures and "[t]he allegation of sexual abuse was found to be inconclusive." After the forensic interviews were concluded on July 20, the former foster mother informed the agency social worker that on the evening of July 19, the child had made statements indicating the child's father had touched the child inappropriately. Following a forensic medical follow-up examination of the child on July 20, 2018, the hospital staff filed its hospital notes indicating that during the examination the child made no spontaneous disclosures and the examination notes indicated that any variants found were most likely "normal."

On July 24, 2018, the agency social worker held a meeting attended by mother, her in-home service provider, counsel for all parties, the child's former foster mother, and "the emergency response worker and her supervisor." A safety plan was created, which was signed by mother and everyone present, and later presented to the court on "July 27." Mother agreed she would not allow the child's father to have visits with the child, and that mother would not have visits with the child's father while the child was in mother's care. Mother also agreed that the only approved respite providers would be the child's former foster parents. At the conclusion of the July 24 meeting, the agency staff informed mother she could take the child home, but mother declined to do so, asking the former foster parents to keep the child until July 29, so that mother could go to the movies with her boyfriend.

On July 29, 2018, mother asked the former foster parents to keep the child until the next day, and the child was returned to mother's care on July 30 at 7:00 p.m. About two and a half hours later, mother called the former foster parents and said the child was having a hard time and wanted to see them again. The former foster parents agreed to pick up the child on August 2. While the child was supposed to be returned to mother on

August 6, the former foster parents could not reach mother by either phone, text, or Facebook message. When mother called on August 7, she asked about the child but did not respond when the former foster parents asked about the logistics of returning the child to mother, and so the former foster parents kept the child in their care.

On August 13, 2018, the agency social worker was contacted by the child's school and was told that the child was not in school. When the agency social worker was not able to reach mother, the worker called mother's in-home service provider. Mother's in-home service provider said that the child had been with the former foster parents since August 2. When the agency social worker contacted the former foster parents and asked why the child had been with them since August 2, the former foster father explained what had happened.

On the morning of August 14, 2018, the former foster parents sent an email to the agency social worker. The email included a screenshot of mother's Facebook page in which mother stated that over the past weekend she had a gun held to her head twice. After the agency social worker consulted with her manager, they agreed that the former foster parents should keep the child until the agency team was able to arrange another safety meeting with mother. On that same day, mother called the agency social worker and told her that she was staying in Oakland because she was scared of her now former boyfriend B.A. who was the person who put a gun to her head. The agency social worker informed mother that a safety meeting had been scheduled for August 15, and mother said she and her new boyfriend would be present. On August 15, mother attended the safety meeting at which time mother admitted it was not her former boyfriend but one of his friends who had pulled the gun on her. Mother agreed to return to her approved RC housing and the agency arranged that the child would be returned to mother the following day, August 16.

About one week later, on August 22, 2018, the agency social worker saw the child's father and learned that mother had violated the July 24 safety plan as father told the social worker that he had spent an hour with the child on August 17. The agency social worker later met with mother who admitted she had allowed the child's father to be

with the child. Three days later, on August 25, an agency social worker, together with police officers, took the child into protective custody and the child was placed in the home of the former foster parents pending the disposition of a section 387 supplemental petition to change the disposition.

On August 28, 2018, the agency filed a section 387 petition, recommending that the court remove the three-year-old child from mother's care because the previous disposition (child's placement with mother) had not been effective in protecting the child. In the petition, the agency alleged: "S1. The mother has placed the child at significant risk of abuse in that the mother willfully violated the court approved safety plan and facilitated a visit between the minor and the father on August 17, 2018. [¶] "S2. Furthermore, out of the past 27 days, the minor has remained in the care of the respite/foster parents for 25 days, as the mother had asked the foster parents to keep the minor A) so the mother could go to movies with her boyfriend; B) because the minor was having a hard time; C) because the mother was unreachable by phone, text, [Facebook] message, and the foster parents couldn't coordinate a drop off; and D) because the mother was staying in Oakland, instead of her [RC] approved home, because she said she had a gun pulled on her by her boyfriend [B.A.] or one of his friends."

Pending the adjudication of the section 387 petition and following the placement of the child with former foster parents in late August 2018, mother remained in her approved RC housing with an in-care service provider. The agency scheduled supervised visits for twice a week between mother and the child; each visit was for three hours, starting August 31, 2018. Mother consistently visited the child and appropriately engaged with the child during those visits.

In late October 2018, the agency social worker received information that mother had been hospitalized on psychiatric holds under sections 5150 and 5250³ from October

³ Section 5150, in pertinent part, allows for the involuntary detention of a person for a period of up to 72 hours for assessment and evaluation when there is probable cause to believe that the person, as a result of a mental health disorder, is a danger to others, or to himself or herself, or gravely disabled. (*Id.*, subd. (a).) Section 5250, in pertinent part,

19 until October 26. The initial section 5150 hold was based on an October 19 incident at a BART station in the East Bay. The police had responded to a dispatch that a woman, later identified as mother, had been seen on the train tracks. When the police arrived at the station mother was detained for interfering with BART operations. After her identification was confirmed, a records check revealed that “two previous calls involved [mother] on the tracks at other stations.” When questioned, mother stated she accidentally slipped onto the tracks at one station and she could not recall why she was on the tracks at another station. Mother said that this time she was on the tracks because she was trying to smoke a cigarette and wanted to be out of the other patrons’ views. Mother stated she had not been feeling like herself and would like to see a psychiatric professional. Mother further stated she had never seen any professionals or been issued any prescriptions, she had not taken any drugs that day, and she denied that she wanted to hurt anyone else and she had not thought about hurting herself. Based on mother’s statements, witnesses’ statements, and the police officers’ own observations, the police found that mother appeared to be a danger to herself and was possibly suffering from a mental illness. The police placed mother “on a psychiatric hold until she could be assessed and evaluated” by a psychiatric professional. Mother was transported to a county hospital that day.

Thereafter, a regional medical center case manager assigned to mother (case manager) contacted the agency social worker and reported on mother’s circumstances. The case manager stated that mother had been found disoriented at a BART station and mother asked for professional help. Mother stated she had fallen while lighting her cigarette. The police placed mother “on a 5150 hold” and mother was then placed on “a

provides that if a person is detained for 72 hours under section 5150 and has received an evaluation, the professional staff evaluator may certify the person for not more than 14 days of intensive treatment related to the mental health disorder, if the professional staff has found the person is, as a result of a mental health disorder, a danger to others, or to himself or herself, or gravely disabled, and the person “has been advised of the need for, but has not been willing or able to accept, treatment on a voluntary basis.” (*Id.*, subds. (a), (c).)

5250 72-hour hold.” When mother arrived at the regional medical center she tested positive for amphetamines and was suffering from symptoms of anxiety and depression. Mother was eligible to leave the hospital on October 22, but she did not want to leave because she did not feel stable enough to do so and it was “unsafe for her at her residence.” Mother’s request to stay at the hospital was granted and she was ultimately discharged on October 26. On October 29, 2018, the agency social worker met with mother at the agency office. Mother confirmed she had been discharged from a “5250 hold” on October 26. When questioned about the positive test for amphetamines, mother said she had smoked some weed with her friends and did not know they had laced the weed with methamphetamine.

The agency social worker also filed a status report for a November 13, 2018 hearing in which she described mother’s compliance with her current case plan. To address her mental health issues, mother was required to remain under the care of a qualified mental health professional for individual therapy, and comply with recommendations for psychotherapy and/or prescribed medication. The agency social worker reported that on June 24, 2017 mother had been referred for individual therapy, but the therapy had been discontinued on November 16, 2017 due to mother’s “lack of engagement,” as reported by the service provider. Since that time mother had not been assigned another therapist. Mother was also required to participate in family therapy/parenting sessions with the child and to follow through with treatment recommendations. On July 28, 2018, the agency social worker had referred mother for child/parent therapy, but the child had been removed from mother’s care on August 25, 2018 before the start of that therapy. The agency social worker also reported that mother had completed a parenting course consisting of 10 weekly sessions (105 minutes per session) between July 24, 2018 and September 25, 2018. The director of the center sponsoring the course reported that mother had actively participated in the group, asked questions, seemed to understand the concepts, and completed assigned exercises and homework. As to the requirement that mother provide adequate supervision for the child,

the agency social worker reported that mother had not followed the safety plan signed by mother to ensure the child's safety.

On December 7, 2018, the agency filed a first amended section 387 petition, which included the initial two allegations and added the following allegations: "S3. On October 20, 2018, the mother was placed on two involuntary psychiatric holds, pursuant to . . . sections 5150 and 5250, after she was found disoriented and on the ground requesting professional attention at [a] . . . BART station. [¶] "S4. On October 20, 2018, the mother tested positive for amphetamines, and exhibited systems of anxiety and depression."

II. December 10, 2018 Order Issued After Combined Jurisdiction and Disposition Hearing on First Amended Section 387 Supplemental Petition

With the consent of mother's counsel and the agency's counsel, a contested combined jurisdiction and disposition hearing was held on December 10, 2018 to resolve the allegations in the first amended section 387 petition. The court considered the testimony of mother and the agency social worker who had been assigned to the case since May 2018. The court also admitted into evidence the agency's five reports: (1) Status Review Report filed August 28, 2018 for a hearing set for August 29, 2018; (2) Addendum Report filed September 14, 2018 for a hearing set for September 20, 2018; (3) Status Review Report/387 filed October 31, 2018 for a hearing set for November 13, 2018; (4) Report filed November 30, 2018 for a hearing set for December 10, 2018; and (5) Second Addendum Report filed December 6, 2018 for a hearing set for December 10, 2018.

A. Contact Between the Child and Father

Both the agency social worker and mother testified regarding the S1. allegation that "[t]he mother has placed the child at significant risk of abuse in that the mother willfully violated the court approved safety plan, and facilitated a visit between the minor and the father on August 17, 2018."

The social worker explained that when the child's father had come into the agency office for another purpose he had stopped and talked to the agency social worker and mentioned his visit with the child on August 17. The father stated he, mother, and the

child, spent about one hour together during which time he picked up the child and held her, he bought the child a sandwich and “some things” at a store, and then they all walked down the street together. Afterwards, mother took the child home because it was getting late. Based on the father’s report of his August 17 meeting with mother and the child, the agency social worker opined that mother had violated the safety plan because mother had not complied with the agency’s instructions as to how mother was to handle encounters with the child’s father if they met in the community.

The agency social worker also explained the agency’s reasons for the July 24 safety plan’s directive that the child’s father was not to have visits or contact the child. The agency social worker admitted that at the time the July 24 safety plan had been prepared and later approved by the court, the agency had not informed either mother or the court of the results of the investigation of the child’s sexual abuse allegations, namely, that the allegations were found to be not substantiated. Nor did the agency social worker know if mother had been informed before August 17 that the child’s sexual abuse allegations had been found to be not substantiated. Nonetheless, the July 24 safety plan had contained a no-visit and no-contact directive as to the child’s father for several reasons: (1) on one occasion the child had mentioned father by name during the investigation of the sexual abuse allegations, and (2) mother had made allegations of domestic violence occurring between the parents when they were living together. The agency social worker further explained that even after the investigation of the child’s sexual abuse allegations had been completed, a no-visit and no-contact directive as to the child’s father was appropriate because father had not demonstrated he was capable of safely visiting with the child. During the time when reunification services were offered, father had not participated in services and he had attended only one visit with the child during the reporting period ending May 16, 2016. Father’s right to visit the child had been terminated by a court order on May 16, 2016, and if father wanted to reinstate visits he would have to first seek relief from the court. The agency social worker testified that she had made it clear to mother that father could not visit with the child based on the May 16, 2016 court order, and mother stated she understood the situation.

Mother testified that, on August 17, after she and the child had left the library and were on the street walking they saw the child's father walking on the street. Mother tried to grab the child because her safety plan said there was to be no contact between the child and the child's father. However, the child was quick, and ran to father who picked up the child. Mother told the child they had to leave but the child fell to the ground and "gave a tantrum." Mother and the child then walked across the street into a store and father followed them. Mother told father he was not allowed contact. However, father insisted on buying the child something in the store, and mother again ignored him. Father bought the child a juice and a cupcake, not a sandwich. Mother then walked out of the store and waited for 15 minutes at a bus stop. Father also stood at the bus stop, but mother ignored him. Father kept trying to talk and engage the child, while mother kept trying to redirect the child and told the child not to talk to father.

On cross-examination, mother stated father was making his presence known "in a bad way," in that "[i]t was just in a taunting way." Mother felt unsafe by his behavior and she told him to leave "plenty of times." Mother asserted she was in the presence of father for less than 10 minutes from the time she bumped into him until the time she got onto the bus with the child. When reminded of her earlier testimony that she had waited for the bus for 15 minutes, mother testified she did not recall how long the whole thing took, but father was not there for an hour. On further cross-examination, mother did not initially recall whether the August 17 encounter was the first time she had allowed the child to spend any time with father. Mother admitted there were times between May 2016 and August 17, 2018 when she allowed the child to visit with father. When asked how many times, mother replied, "Not visit. I don't recall. I don't know." She then testified that the child had seen father on only one previous occasion when they were passing in the street. When questioned about the child's ability to know the father, having seen him on only one previous occasion between the ages of one and three, mother stated the child acknowledged father because the child's name was called. Mother would not characterize the August 17 encounter as a visit between the child and father. "It was just he was just in the community. [The agency] told me not to run when

they see[] him. So I in a sense, he's in the community living in San Francisco at the time, I felt not to make [the child] scared or frightened just by running away from him." Mother was trying to comply with the safety plan.

Mother admitted that she was present at a July 24, 2018 meeting with the agency staff who discussed their concerns regarding the child. Specifically, the agency staff was concerned about the child's contact with father, and therefore, mother agreed to no longer allow the child to have contact with father. Mother also admitted that on July 24 she knew the child's father was not to have visits with the child. However, when she encountered father on August 17, mother did not call 911 and she did not think to call the agency social worker because the meeting "was just in the community." Mother further testified that sometime in July or early August, her in-home service provider told her the sexual abuse allegations concerning the child were not substantiated. Mother believed she was informed about the results of the investigation of the sexual abuse allegations after the August 17 meeting with the child's father.

B. Child in Care of Former Foster Parents

Both the agency social worker and mother testified concerning the S2. allegation that mother had left the child in the care of the former foster parents for 25 days out of 27 days.

The agency social worker explained the circumstances under which mother had left the child in the care of the former foster parents as she had described the situation in the agency status report. The agency social worker believed that mother's conduct of leaving the child with the former foster parents was not a protective act because mother had not arranged for the child to be cared for by the former foster parents for 25 days out of 27 days and the former foster parents were not able to contact the mother to facilitate the return of the child.

Mother testified that she left the child in the care of the former foster parents because they were part of mother's safety plan and they were the only persons with whom she could safely leave the child. Addressing the former foster parents' statement that they could not reach mother in early August 2018 to return the child, mother testified

she had told the former foster parents that her phone “was messed up,” and that if they could not get in contact with her, they should take the child to school on Monday. Mother claimed that she sent emails to the former foster parents, but when she got no response she “just, not really gave up but let [the child] stay longer,” because she did not have any other choice. Mother further testified that she had gone to the child’s school to check if the child had been dropped off, but the child was not there. Mother went to the school for “a whole week,” but the child was never there.

Mother also claimed that during the time period alleged in the S2. allegation, she had left the child with the former foster parents (1) for one week when mother’s in-home service provider was leaving for seven days on vacation and mother was required to move into a new home with a new in-home service provider and mother did not want to take the child to the new home because mother felt uncomfortable and she did not know how the child would react to a new home; (2) for one week when mother had a common cold that left her bedridden; and (3) for one week when mother had an incident with her former boyfriend and it was not safe for the child to be around mother at that time.

C. Mother’s Psychiatric Detentions

The agency social worker testified regarding the S3. and S4. allegations that mother had been held on psychiatric detentions under sections 5150 and 5250 and she had tested positive for amphetamines and expressed symptoms of anxiety and depression in late October 2018. The agency social worker was aware that, beyond the first 72 hours of the involuntary hold, mother had voluntarily decided to stay at the hospital. The agency social worker had discussions with mother, who admitted that she had been “at the hospital,” but she did not share anything about the hospitalization.

Mother did not offer any specific testimony concerning the S3. and S4. allegations. However, she testified she believed it was best for the child to return to her custody with family services because “based on the allegations [she] did not do anything wrong to put [the child] in danger, any kind of danger.”

D. Juvenile Court's Findings and Order

The court requested counsel's closing arguments to include each party's request for disposition. Both the agency's counsel and the child's counsel argued that the court should find true the allegations in the first amended petition, and that because mother was no longer entitled to reunification services under section 361.5, the only remaining disposition option was to set a section 366.26 hearing on April 10, 2019 to determine the child's permanent placement. Mother's counsel conceded that mother had exceeded the limit for reunification services, but asked the court to return the child to mother's custody with family maintenance services because the evidence did not support the allegations in the first amended petition.

Before issuing its findings and order, the court stated: "In terms of the big picture. . . from what I am hearing from you and from the worker, you have a difficult life. You have a lot of things that are challenging to you. You have a lot of people that want to help you. You have had some bad relationships, some of which scare you. And you are a single parent trying to raise your daughter. [¶] . . . [I]t looks like you were receiving in-home services with both family maintenance services for a really long time. And when I look at your case plan in terms of why and what you are trying to accomplish with the focus on safety for [the child], your goals are to be under the care of a therapist and to comply with recommendations for your medications. Your goal is to do family therapy and parenting support sessions with your [child] and follow through in treatment recommendations. Your goal is to obtain appropriate medical and dental care for your child, and provide adequate supervision for your child. [¶] And I also see in the report that [the child] is healthy, and [the child is] described as talkative and energetic and curious, all good things for a three-year-old. And that you have been keeping up with [the child's] doctor and dentist appointments. [¶] And so on the one hand I see that you are still struggling, and I also see that you have tried to make some choices that were intended to protect your daughter, although some of those choices you didn't quite do the right way and you didn't let everyone who needs to know know what you are doing. [¶] When I look at the allegations for the reasons why [the child] was removed from you, . . .

it's all of them together that create[s] a concern that the plan that we had before hasn't been keeping [the child] safe as it was intended to do." "And based on the sum of the allegations, the Court finds that the previous disposition has not been effective."

Based on the five agency reports, the testimony, and counsel's arguments, the juvenile court's findings on the allegations were as follows: (1) the S1. allegation is true as modified (to the extent that mother had put the child at risk when mother willfully violated the court approved safety plan, and facilitated a visit between the child and the child's father on August 17, 2018⁴); (2) the S2. allegation is true (that mother had left the child in the care of former foster parents for 25 days of 27 days); (3) the S3. allegation is true as modified (to the extent that mother was placed on two psychiatric holds, pursuant to sections 5150 and 5250, after she was found disoriented and on the ground requesting professional attention at a BART station ⁵), and (4) the S4. allegation is true (mother tested positive for amphetamines and suffered from symptoms of depression and anxiety).

The court also made the following necessary finding required by sections 361, subdivision (c)(1), and 387: "there is clear and convincing evidence that there is a substantial danger to the physical safety, protection or physical well-being of the child if the child were to be returned home, and there are no reasonable means by which the child's physical health can be protected without removing the child from [mother's] custody." Based on its findings and order, the court vacated its previous disposition placing the child with the mother, terminated mother's family maintenance services, denied mother further reunification services on the sole ground that she had already

⁴ The court modified the S1. allegation, by striking the word "significant" as to the risk to the child caused by mother's conduct on August 17.

⁵ In modifying the S3. allegation, by striking the word "involuntary" as to the psychiatric holds, the court stated: "I am going to strike the word 'involuntary,' because there is a legal definition of a [section] 5150 and a [section] 5250, but I also heard testimony that when [mother was] having [her] crisis [she was] able to communicate to the police officers that [she also] wanted help and [mother was] cooperative with them. So I want to acknowledge that on that day [mother was] also asking for help"

received the maximum amount of reunification services available to her, and set a section 366.26 hearing for April 10, 2019 to determine the child's permanent placement.

DISCUSSION

I. Sufficiency of Evidence to Support the Juvenile Court's Findings and Orders

A. Applicable Law

The relevant law applicable to this writ proceeding is not in dispute. "A section 387 supplemental petition is used to change the placement of a dependent child from the physical custody of a parent to a more restrictive level of court-ordered care. [Citations.] In the jurisdictional phase of a section 387 proceeding, the court determines whether the factual allegations of the supplemental petition are true and whether the previous disposition has been ineffective in protecting the child. [Citations.] If the court finds the allegations are true, it conducts a dispositional hearing to determine whether removing custody is appropriate. [Citations.] A section 387 petition need not allege any new jurisdictional facts, or urge different or additional grounds for dependency because a basis for juvenile court jurisdiction already exists. [Citations.] The only fact necessary to modify a previous placement is that the previous disposition has not been effective in protecting the child." (*In re T.W.* (2013) 214 Cal.App.4th 1154, 1161; see § 387; Cal. Rules of Court, rule 5.565.)

"When a section 387 petition seeks to remove a minor from parental custody, the court applies the procedures and protections of section 361. [Citation.] Before a minor can be removed from the parent's custody, the court must find, by clear and convincing evidence, '[t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's . . . physical custody.' [(§ 361, subd. (c)(1).)]" (*In re T.W.*, *supra*, 214 Cal.App.4th at p. 1163.) "If a dependent child was returned to the custody of a parent . . . at the . . . 12-month review . . . and a 387 petition is sustained and the child is removed once again, [as in this case], the court must set a hearing under section 366.26 unless the court finds there is a substantial probability

of return within the next 6 months or, if more than 12 months had expired at the time of the prior return, within whatever time remains before the expiration of the maximum 18-month period.” (Cal. Rules of Court, rule 5.565(f).)

B. Analysis

Relying on isolated portions of the record, mother argues the juvenile court findings sustaining the allegations, as modified by the court, in the first amended petition, and its order removing the child from her custody, are not supported by substantial evidence. In support of her argument, mother asks us to accept her version of the events that gave rise to the filing of the section 387 supplemental petition, and further contends the juvenile court should not have given any weight to any statements made by the child’s former foster parents because their statements were motivated by their desire to adopt the child. Mother further contends the court’s ruling that the child had to be removed from mother’s custody failed to consider that mother was living in approved RC housing with an in-home service provider who was mandated to make a report if mother put the child at risk of harm.

However, mother’s arguments misconstrue our role as an appellate court. We do not review the court’s rulings for substantial evidence that would support findings in favor of mother, as she suggests by her argument. Rather, our authority is limited to determining whether there is substantial evidence to support the court’s findings in favor of the agency. “If this ‘substantial’ evidence is present, *no matter how slight it may appear in comparison with the contradictory evidence*, the judgment must be upheld.” (*Howard v. Owens Corning* (1999) 72 Cal.App.4th 621, 631; italics added.) Nor is it of any consequence “*that the [trier of fact] believing other evidence, or drawing other reasonable inferences, might have reached a contrary conclusion.*” [Citations.]” (*Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 874.) The substantial evidence standard also applies to the juvenile court’s finding that must be made by clear and convincing evidence. (*In re Henry V.* (2004) 119 Cal.App.4th 522, 528-529.) Whether the previous disposition, allowing mother to parent the child as a single parent with family maintenance services, had not been effective in protecting the child, was “a question

addressed peculiarly to [juvenile] court[,] which heard [mother's] testimony and observed [her] demeanor" at the hearing, together with the other testimonial and documentary evidence admitted at the hearing. (*In re Marriage of Sheridan* (1983) 140 Cal.App.3d 742, 749.) Therefore, we must reject mother's arguments to the extent she attempts "to reargue . . . those factual issues decided adversely to [her,] . . . contrary to established precepts of appellate review." (*Hasson v. Ford Motor Co.* (1982) 32 Cal.3d 388, 398-399.)

Based on the agency social worker's testimony and reports, the juvenile court could reasonably find that there was a valid concern about mother's ability to keep the child safe because she had willfully violated the July 24 safety plan by facilitating a one hour visit between child and the child's father on August 17 and she had failed to make appropriate arrangements and to keep in contact with the former foster care parents while the child was in their care for 25 of 27 days. The juvenile court could also reasonably find that mother's ability to keep the child safe was called into question by the October 2018 psychiatric holds under sections 5150 and 5250, evidencing a recurrence of her mental health issues that had been the basis of the initiation of the dependency and for which she had stopped engaging in services and taking prescribed medication. Contrary to mother's contention, the court was not required to accept her testimony regarding the various incidents even if it was not contradicted, or supported, in part, by the agency social worker's testimony and the agency reports. "As [the court] said in *Nevarov v. Caldwell* (1958) 161 Cal.App.2d 762, 777 [327 P.2d 111], 'the [trier of fact] properly may reject part of the testimony of a witness, though not directly contradicted, and combine the accepted portions with bits of testimony or inferences from the testimony of other witnesses thus weaving a cloth of truth out of selected available material. [Citations.]'" (*Stevens v. Parke, Davis & Co.* (1973) 9 Cal.3d 51, 67-68.) We also see no merit to mother's argument that the juvenile court should not have given any weight to statements made by the child's former foster parents because their statements were motivated by their desire to adopt the child. "It is the trial court's role to assess the credibility of the various witnesses, to weigh the evidence to resolve the conflicts in the

evidence. We have no power to judge the effect or value of the evidence, to weigh the evidence, to consider the credibility of witnesses or to resolve conflicts in the evidence or the reasonable inferences which may be drawn from that evidence. [Citations.] Under the substantial evidence rule, we must accept the evidence most favorable to the order as true and discard the unfavorable evidence as not having sufficient verity to be accepted by the trier of fact. [Citation.]” (*In re Casey D.* (1999) 70 Cal.App.4th 38, 52–53.)

Nor are we persuaded by mother’s argument that the juvenile court should have found the previous disposition placing the child with mother with family maintenance services was effective because the agency had at one time recommended dismissal if mother could get a stable home and by the time of the December 10, 2018 hearing mother was living in approved RC housing with an in-home service provider who was a mandated reporter. In making its findings as to the effectiveness of the previous disposition and the need to remove the child, the juvenile court was obligated to consider both the reasons for the initiation of the dependency and the likelihood that mother would be able to maintain a stable lifestyle for the remainder of the child’s childhood. By the time of the section 387 hearing in December 2018, mother had been offered more than three years of family reunification and maintenance services. The reason for the child’s original detention was mother’s mental health issues for which the court ordered her to participate in therapy and take any prescribed medication. The agency’s initial dismissal report filed in March 23, 2018, made clear that the recommendation of dismissal was contingent on mother’s securing appropriate housing and continuing to address her mental health issues because by that time mother had stopped participating in therapy and she had stopped taking her prescribed medication. While mother secured approved RC housing with an in-care service provider in April 2018, there is no evidence that she resumed therapy or a medication regiment to address her mental health issues, and she had a recurrence of her anxiety and depression symptoms in October 2018 that led to a one-week hospitalization.

Further, there is no evidence that following mother’s release from the hospital she complied with her case plan components to continue with individual therapy and the

taking of any prescribed medication, which requirements were put in place to address mother's mental health issues. Thus, on this record, the juvenile court could reasonably find that even though mother was living in approved RC housing with an in-home service provider, mother's failure to address the other components of her case plan including her mental health issues put the child at substantial risk of harm if the child was kept in mother's care with family maintenance services. This is especially so as mother presented no independent evidence – by way of reports, letters, or testimony of current service providers, and other professionals who worked with mother – showing that she was ready to assume custody of the child on a full-time basis with family maintenance services.

We see nothing in the record from which we can conclude that the juvenile court was required, as a matter of law, to return the child to mother's custody with family maintenance services at the time of the December 10, 2018, hearing. To reverse the order directing removal of the child from mother's custody, we would have to conclude the juvenile court could have ruled in only one way, compelling a finding in favor of mother as a matter of law. We cannot so conclude in this case. Accordingly, we must uphold the order directing the child's removal from mother's custody.

II. Combined Jurisdiction and Disposition Hearing to Resolve First Amended Section 387 Petition

Mother complains that the court erred by failing to hold a disposition hearing or a separate disposition hearing. However, when asked by the court, counsel for mother confirmed that the December 10, 2018 hearing was to be a combined jurisdiction and disposition hearing. Consequently, mother's complaint is forfeited as she failed to raise any objection in the juvenile court. (See *In re Richard K.* (1994) 25 Cal.App.4th 580, 590.)

Additionally, section 387 and the rules governing the resolution of section 387 petitions do not mandate that the court hold separate jurisdiction and disposition hearings. (See *In re Miguel E.* (2004) 120 Cal.App.4th 521, 542; see also § 387, Cal. Rules of

Court, rule 5.656 (e)⁶.) Nor do we see any merit to mother’s contention that she was prejudiced by the court’s holding a combined jurisdiction and disposition hearing. Mother contends that while the court made the required statutory finding supporting removal of the child from her custody (§§ 361, subd. (c)(1), 387), it failed to consider the fact that mother was living in approved RC housing with an in-home service provider who was mandated to make a report if mother was putting the child at risk of harm. However, at the time of the December 2018 hearing the juvenile court was well aware that mother was living in approved RC housing with an in-home service provider. Nonetheless, the juvenile court could reasonably find that the incidents that formed the basis of the section 387 petition, and in particular her October 2018 hospitalization on psychiatric holds during which she exhibited symptoms of anxiety and depression, demonstrated that the prior disposition was not effective in protecting the child from risk of harm. A removal order is proper if it is based on proof of (1) parental inability to provide proper care for the minor and (2) potential detriment to the minor if he or she remains with the parent. [Citation.] The parent need not be dangerous and the minor need not have been harmed before removal is appropriate. The focus of the statute is on averting harm to the child. [Citation.]” (*In re T.W.*, *supra*, 214 Cal.App.4th at p. 1163.) Accordingly, mother’s claim of error fails.

DISPOSITION

The petition for an extraordinary writ is denied on the merits. (Welf. & Inst. Code, § 366.26, subd. (l); Cal. Rules of Court, rule 8.452(h).) The request for a

⁶ While California Rules of Court, rule 5.565(e) is labeled “Requirement for *bifurcated* hearing,” the rule nonetheless describes, in pertinent part, the procedures for “the hearing” on a supplemental petition under section 387 as follows: “(1) The procedures relating to jurisdiction hearings . . . apply to the determination of the allegations of a . . . supplemental petition. . . . At the conclusion of the hearing on a supplemental petition the court must make findings that: [¶] (A) The factual allegations are or are not true; and [¶] (B) The allegation that the previous disposition has not been effective is or is not true. [¶] (2) The procedures relating to disposition hearings . . . apply to the determination of disposition on a . . . supplemental petition.”

temporary stay is denied as moot. Our decision is final immediately. (Cal. Rules of Court, rules 8.452(i) & 8.490(b).)

Petrou, J.

WE CONCUR:

Siggins, P.J.

Fujisaki, J.